STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Illinois Bell Telephone Company	:	
	:	**01-0609**
Investigation of the propriety of the	:	
rates, terms, and conditions related	:	
to the provision of the Basic COPTS	:	
Port and the COPTS-Coin Line Port.	:	

ORDER

DATED: October 22, 2003

TABLE OF CONTENTS

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**:**	
On Its Own Motion	**:**	
-vs-	**:**	
Illinois Bell Telephone Company	**:**	
	:	**01-0609**
Investigation of the propriety of the	**:**	
rates, terms, and conditions related	**:**	
to the provision of the Basic COPTS	**:**	
Port and the COPTS-Coin Line Port.	**:**	

ORDER

By the Commission:

I. BACKGROUND AND PROCEDURAL HISTORY

In late March 2001, Payphone Service, Inc. requested that SBC provide unbundled network elements in combinations necessary to provide access services to pay telephone service providers. On March 21, 2001, Data Net Service also requested that SBC provide unbundled network elements platform in combinations necessary to provide access services to pay telephone service providers. (P.C. Cross Ex. 12.) SBC responded to both of these requests indicating that it would not provide services unless each CLEC paid SBC for the software upgrades to provide Flexible Automatic Number Identification ("Flex ANI").

On September 10, 2001, Illinois Bell Telephone Company ("SBC") filed its Tariff Advice No. 7530 with the Illinois Commerce Commission ("Commission") which described and priced a new unbundled network element service that SBC described as unbundled local switching with basic coin operated pay telephone services (COPTS) line port. The tariff priced the new UNE by adding $2.19, to the existing Basic Line Port Rate. The adder was ostensibly intended to recover additional costs attributable to software licenses SCB purchased to support the offering. On September 11, 2001, Data Net Systems, LLC, TruComm Corporation, and Payphone Services, Inc. filed a petition requesting that the Commission initiate an investigation to determine the just and reasonable rate for the line port, and to set an interim rate pursuant to Section 13-801(g) of the Illinois Public Utilities Act, 220 ILCS 5/13-801(g).

The Petitioners objected to the rates in the Payphone Port Tariff, contending that Section 13-801(g) requires cost-based rates and that there was no cost justification for Ameritech Illinois to add a $2.19 rate to the existing Basic Line Port rates or to the existing rates for the COPTS-Coin Line Port. Based on information and belief, the Petitioners alleged that Ameritech Illinois should not be allowed to increase the Basic

Line Port rate because the increase would allow Ameritech Illinois to recover costs that have already been recovered, or in the alternative to recover costs that Ameritech Illinois is not permitted to recover. In support of their argument, the Petitioners pointed to Federal Communications Commission ("FCC") orders that addressed the provisioning of flex ANI for all incumbent local exchange carriers.

On September 20, 1996, and November 8, 1996, the FCC ordered Ameritech Illinois to provide payphone specific coding digits from its switches for calls originating from payphones. *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket 96-128. Further, through orders entered on October 7,1997, and March 9, 1998, the Common Carrier Bureau extended until June 8, 1998, the time for Ameritech Illinois to install Flex ANI software on its switches to meet the coding digits requirement (collectively "Payphone Orders"), and that the March 9, 1998, order authorized Ameritech Illinois and other ILECs "to recover from PSPs [Payphone Service Providers] their incremental costs of providing payphone-specific coding digits [Flex ANI] for purposes of enabling PSP calls to be identified by IXCs to pay compensation for each and every completed intrastate and interstate telephone call made using a payphone that is not otherwise compensated." The FCC also allowed Ameritech Illinois to propose reasonable recovery periods when it filed its tariffs for Flex ANI cost recovery from the PSPs.

The Petitioners pointed out that, on or about March 31, 1998, Ameritech Illinois filed a federal tariff that imposed a charge on PSPs for a period of 24 months to recover the costs of implementing Flex ANI in the Ameritech Illinois switches. Moreover, the Petitioners argued that Ameritech Illinois has known since this Commission's order in ICC Docket Nos. 95-0458/0531, entered June 26, 1996, (confirmed in the Commission's order in ICC Docket Nos. 96-0486/0569, entered February 17, 1998), both of which were entered before the March 9, 1998, order in CC Docket 96-128 and before the filing of its federal tariff, that under Illinois law Ameritech Illinois was obliged to provide the switch to requesting carriers with all of the features and functionalities of the switch. Petitioner stated that Ameritech Illinois has either already recovered the costs for Flex ANI implementation or has already had the opportunity to recover the costs under the FCC orders, and that in either event, there is no cost justification for an additional $2.19 recurring monthly rate element to CLECs sought in Ameritech Illinois's Payphone Port Tariff.

While Petitioners objected to the rate of the switching network element offered by Ameritech Illinois, they asserted that it would promote competition and be in the public interest for the Commission to set an interim network element switching rate for the Basic COPTS Port equal to the cost-based rate for the Basic Line Port, currently $5.01, and to set an interim rate for the COPTS-Coin Line Port equal to the rate for the Ground Start Line Port, currently $5.78, and to allow the Proposed Tariff to go into effect with such Commission-set interim rates[1]. Furthermore, the Petitioners requested that the Commission initiate an investigation of the Payphone Port Tariff and confirm that Ameritech Illinois has the burden of proof to establish the justness and reasonableness

[1] The rate structure for Ameritech Illinois's port charges is the subject of Docket No. 00-0700, which is currently pending before this Commission.

of the rates, terms, and conditions of the Payphone Port Tariff. So that other carriers can provide services covered by the terms of the Payphone Port Tariff, the Petitioners requested that the Commission adopt on the above interim rates until the cost based rate determination is made, or the interim rate is modified, by the Commission.

Following its review of the matters contained in the petitions of the interested parties, the Commission entered an order establishing interim rates for the payphone services and ordering this investigation. Following the entry of the Initiating Order, the parties attempted to negotiate an appropriate resolution to this matter but were unable to do so. Accordingly, an evidentiary hearing was held in this matter on January 24, 2003. A briefing schedule was established and extended by agreement of the parties on several occasions. A proposed order was served on the parties and Briefs on Exceptions and Replies as received have been considered by the Commission in reaching the findings and conclusions herein.

II. UNDISPUTED FACTS

The parties at various points have asserted that the facts in this case are, for the most part, undisputed, an assertion that fails even rudimentary scrutiny. The undisputed facts that may be winnowed from the arguments found in the disputants' recitations of fact are as follows.

On June 26, 1996, the Illinois Commerce Commission ("Commission") SBC, Illinois, to provide the “Unbundled Network Elements Platform” (“UNE-P”) under Section 13-505.5 of the Illinois Public Utilities Act, as well as under Section 251(c)(3) of the federal Communications Act. 220 ILCS 5/13-505.5; 47 U.S.C. § 251(c)(3). In *In re Petition of LDDS Communications, Inc. v. Illinois Bell Telephone Company*, ICC Dkt. No. 95-0531, Order entered June 26, 1996. On September 23, 1998, the ICC ordered SBC to implement UNE-P with shared transport that relied upon Advanced Intelligent Network (“AIN”) triggers to provide UNE-P and shared transport. According to the order approving the SBC-SBC merger, the AIN approach in providing shared transport allows SBC to bill CLECs for usage sensitive charges for using shared transport facilities.

Finally, in ICC Docket No. 00-0700,(Final Order entered June 10, 2000) the Commission investigated the actual costs incurred by SBC in making UNE-P services available to CLECs with AIN-based shared transport. The Commission held that a rate of $2.18 would fully recover SBC’s cost of providing UNE-P services, with AIN-based shared transport.

The network element at issue here is a basic line port, combined with unbundled local switching (ULS). The basic line port is the same basic line port that SBC makes available to CLECs to use in providing telecommunications services to end users, and is the same basic line port that SBC uses to provide telephone service to its own retail customers. SBC has designated the basic line port as a “Basic COPTs Port” and the “COPTs-Coin Line Port,” and has proposed a tariffed rate for the COPTS Port different than the rate for a basic UNE port. According to SBC, this additional rate is necessary to recover "right to use" licensing fees paid by SBC to Lucent to make Flexible Automatic Number Identification, or Flex ANI, available to CLECs that intend to provide services to payphone service providers. At the time this case was initiated, the TELRIC-based rate for a basic UNE port was $5.01, and SBC's tariff proposed to add an additional $2.19 for the Flex-ANI feature. However, as a result of the Commission's July 10, 2002 Order in Docket No. 00-0700, the TELRIC-based rate for a basic UNE port was set at $2.18. After the Commission issued its order in 00-0700 , SBC revised its testimony in this proceeding to add $1.07 (instead of $2.19) to the basic line port with Flex ANI capability. (Currie Schedule KAC-1S, SBC Ex. 1.2.)

Flex ANI is a software feature embedded in all switches that, when enabled, allows a local exchange carrier ("LEC") to insert an additional set of pre-defined digits into the automatic number identification ("ANI") stream accompanying each call, thereby instructing the network of unique routing or rating instructions associated with the call. (Starkey, CLEC Ex. 1.0 at 4.) FLEX-ANI is not specifically used for pay telephone services, but instead, can be used for any number of current, or future, network services that require special rating or routing instructions. (*Id.*) When used in support of network services made available to pay telephone providers, FLEX-ANI generates a pre-defined, two-digit identifier ("70") that allows an inter-exchange carrier ("IXC") to identify a call as originating from a pay telephone. (Id.) Section 276 of the federal Communications Act, 47 U.S.C. § 276, requires IXCs to compensate pay telephone providers for toll free and access code calls originated from a pay telephone. FLEX-ANI services are required so that all interested parties can accurately identify pay telephone calls for proper compensation. FLEX-ANI is a service provided by the local exchange carrier ("LEC") to the pay telephone provider.

FLEX ANI, which is a switch software feature, enables the transmission of a number of additional coding digits with a call that can, *inter alia*, uniquely identify a call as coming from a payphone. FLEX ANI codes are generated in end office databases and FLEX ANI is more flexible and easily modified to add additional coding digits than conventional ANI ii. When FLEX ANI codes are available, they are outpulsed with the call, instead of the embedded hardcoded ANI ii digits. FLEX ANI enables the assignment of more two digit codes (potentially 00-99) for payphones in addition to the "27" code already provided by ANI ii, including "29" for prison/inmate payphones and "70" for "smart" payphones.

FLEX ANI is deemed flexible because new codes can be added to each end office database with the installation of new switch software. FLEX ANI is not available on non-equal access switches, but is resident on many equal access switches where it must be activated ("turned on") as a software capability. FLEX ANI requires a one time switch implementation per end office and associated trunk translations for each IXC, which ensure that the payphone-specific code will transfer thereafter with all calls from payphones. The major costs involved in implementing FLEX ANI are the initial generic software upgrades if necessary, activating the software, and provisioning end office trunks to provide the service to each IXC. Using FLEX ANI, IXCs can identify the call as a payphone call for call tracking, pay per-call compensation for the call, bill for the call based on the information provided with the call, and block the completion of the call if requested by the customer.

In the March 9, 1999 *Memorandum Opinion and Order*, the FCC authorized SBC "to recover from PSPs [SBC's] incremental costs of providing payphone-specific coding digits [Flex ANI] for purposes of enabling PSP calls to be identified by IXCs to pay compensation for each and every completed intrastate and interstate telephone call made using a payphone that is not otherwise compensated." *Id.* ¶ 40. Notably, the FCC's *Memorandum Opinion and Order* held that the major costs involved in implementing FLEX ANI are the initial generic software upgrades if necessary, activating the software. *Id.*, ¶ 20.

When SBC was required to provide Flex ANI on access lines made available directly to Payphone Service Providers (PSPs), it purchased software licenses from Lucent for two Secure Feature ID: SFID 38 and SFID 142. Tr. 106; PC Cross Ex. 3. Pursuant to FCC order, SBC filed a tariff that assessed a rate of $1.21 per month per access line to all Payphone Service Providers ("PSPs") operating in Illinois, including its own payphone operations, for the period from June 1998 through June 2000. (Starkey Direct, PC Ex. 1.0, p. 6-7.)

SBC at some point discovered that the interaction between switch software and the Advanced Intelligent Network ("AIN") software that SBC Illinois uses to provide shared transport stripped off the FLEX ANI digits that would normally identify a call as originating from a payphone. SBC Br. p. 4. This occurred because the AIN "triggers" that support SBC Illinois' UNE-P offering did not correctly recognize the Flex ANI digits that identify payphone calls. *Id.*

To solve its problem in provisioning Flex ANI to CLECs, SBC purchased 2 additional software features developed by Lucent to address the problems relating to providing Flex ANI with UNE-P. The two software features were already resident in the Lucent 5ESS switches, but the licenses had not been purchased by SBC. The two software features are Secure Feature Identification Number 332 ("SFID 332") and Secure Feature Identification Number 528 ("SFID 528.")

The final fact upon which the parties agree is that the FCC and this Commission ordered SBC Illinois to provide AIN-based shared transport, at the insistence of the CLECs, as a part of the approval of the SBC/SBC Illinois merger. The remainder of the facts, and the inferences to be drawn from them, appear to be in dispute. Because the remaining facts are in dispute, they are contained in the parties' arguments.

III. POSITIONS OF THE PARTIES

The initiating order in this matter assigned the burden of proof to SBC Illinois. Accordingly, the parties agreed to a briefing schedule that allowed an Initial Brief by SBC, a responsive brief by a number of intervening parties, referred in the record as the "Payphone Coalition" and referred to herein as the "PC," and a Reply Brief by SBC.

A. SBC

SBC begins by raising issues concerning the scope of any possible Commission Order in this matter, then asserting that numerous "undisputed" facts support its position that the rates proposed for the charges for the services in question are just and reasonable.

In terms of the scope of this proceeding, SBC begins by asserting that first matter to be determined by the Commission concerns the scope of the docket. SBC asserts that the scope was determined by the Petition of the Payphone Coalition and the resulting Commission Order initiating Docket 01-0609. Order, Ill. C.C. Dkt. 01-0609, 2-3 (the "Initiating Order"); Verified Petition to Set an Interim Rate for SBC Illinois Tariff Pursuant to Section 13-801(g), Ill. C.C. Dkt. 01-0588 (Am. Ill. Ex. 3.0, Sched. WKW-3.0.2) (the "Petition"). The proceedings began when SBC Illinois filed its Unbundled Payphone Port tariff, accompanied by a request that the tariff be made effective on less than 45 days' notice. The Payphone Coalition did not object to the offering generally, but did object to the pricing of the offering. SBC asserts that the rates filed by SBC Illinois were intended to recover the costs of certain switch software upgrades in the Unbundled Payphone Port rates, while the Payphone Coalition opposed the inclusion of those costs in the Unbundled Payphone Port rates. Initiating Order at 2-4; Petition at ¶¶ 11-14.

SBC goes on to note that in a March 1998 order, the FCC required all local exchange carriers ("LECs") to implement Flexible Automatic Number Identification ("Flex ANI") to identify payphone calls. Memorandum Opinion and Order, In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Dkt. 96-128, 13 FCC Rcd. 4998, ¶¶ 23, 31, 33 (March 9, 1998) (the "Payphone Clarification and Waiver Order"). The FCC also authorized LECs "to recover from PSPs their incremental costs of providing payphone-specific coding digits for purposes of enabling PSP calls to be identified by IXCs to pay compensation for each and every completed intrastate and interstate telephone call made using a payphone that is not otherwise compensated." Payphone Clarification and Waiver Order at ¶ 38. According to SBC, the Payphone Coalition in opposing the prices proposed for the payphone UNE, argued that SBC Illinois either already recovered, or should have recovered, the additional costs at issue in this proceeding through the tariffs filed pursuant to the FCC's Payphone Clarification and Waiver Order. Initiating Order at 2-4; Petition at ¶¶ 11-14. According to SBC, neither the Payphone Coalition's Petition nor the Commission's Initiating Order identified any other issues to be investigated in this proceeding.

In further support of its position, SBC asserts that during the parties' discussions, over the service SBC intended to offer the CLECs, the CLECs took the same position they later took in their Petition; that SBC Illinois already either recovered or should have recovered all costs associated with providing Flex ANI through the tariffs it had filed in response to the FCC's Payphone Clarification and Waiver Order. In essence, the parties "agreed to disagree" on that issue, and to let the Commission decide it. According to SBC, that was the only issue discussed by the parties, and it was the only issue that the parties anticipated litigating before the Commission. The scope of the parties' discussions and their understanding regarding the scope of this proceeding were reflected by the Petition and, ultimately, by the Commission's Initiating Order. (Id. at 7).

In addition, SBC argues that Illinois courts have made clear that the Commission may not issue an order that is broader than the scope of the proceeding before it. For example, in a complaint case, the Commission may not address issues that were not raised in the complaint itself. Alton & So. R.R. v. Commerce Comm'n, 316 Ill. 625, 629-30 (1925); Peoples Gas Light & Coke Co. v. Commerce Comm'n, 221 Ill. App. 3d 1053, 1060 (1st Dist. 1991). Similarly, in a tariff investigation, the Commission should not go beyond the scope of the order initiating the investigation. Order, Ill. C.C. Dkt. 00-0700, ¶ 29 (July 10, 2002).

Here, neither the Payphone Coalition's Petition nor the Commission's Initiating Order identified any other issues. As a result, the Commission should not address the other issues raised by the Payphone Coalition. In any event, as explained below, the Payphone Coalition's other positions are incorrect and should be rejected on the merits if, for some reason, the Commission addresses them.

SBC then turns to its arguments in support of its position that the costs of implementing the FlexANI solution should be recovered in higher port costs and against the CLECs position that the costs are either already being recovered or that SBC has chosen to forego the opportunity for recovery at the Federal level.

SBC begins by arguing that neither the Payphone Clarification and Waiver Order (which addressed Flex ANI cost recovery issues) nor any of the FCC's related orders addressed the rates at issue in this proceeding, because the FCC's Payphone Clarification and Waiver Order does not address UNE rates or any aspects of ILEC/CLEC relationships at all. SBC asserts that even the Payphone Coalition's witness, Mr. Starkey, conceded that this is true. (Tr. 220-22). Instead, according to SBC, those orders address relationships between LECs generally, including both ILECs and CLECs, with the IPPs and IXCs. Regarding Flex ANI cost recovery, the FCC addressed only the costs of LECs providing Flex ANI to IXCs through charges imposed on IPPs. For example, the paragraph of the Payphone Clarification and Waiver Order quoted in the Commission's Initiating Order explained

> We authorized LECs [not just ILECs] to recover from PSPs their incremental costs of providing payphone-specific coding digits for purposes of enabling PSP calls to be identified by IXCs to pay compensation for each and every completed intrastate and interstate telephone call made using a payphone that is not otherwise compensated." Payphone Clarification and Waiver Order at ¶ 40.

Similarly, the paragraphs of the order that require the implementation of Flex ANI apply to LECs generally, not just ILECs. Id. at ¶¶ 31-33, 99. According to SBC this makes perfect sense because if these obligations did not apply to CLECs, then payphone calls carried by CLECs might not be tracked and compensated as the FCC requires. None of the related FCC rules and orders dealing with per-call compensation and Flex ANI implementation address UNE rates, either. Each of them imposes its obligations on LECs generally, not only on ILECs. None of them addresses the ILEC/CLEC relationship in any way. SBC points to the following in support of its assertions: 47 CFR §§ 64.1300-64.1340 (2002); Payphone Clarification and Waiver Order; Second Report and Order, In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Dkt. 96-128, 13 FCC Rcd. 1778 (Oct. 9. 1997); Order on Reconsideration, In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Dkt. 96-128, 11 FCC Rcd. 21233 (Nov. 8, 1996); Report and Order, In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Dkt. 96-128, 11 FCC Rcd. 20541 (as corrected Sept. 27, 1996).

In short, according to SBC, the Payphone Coalition's position—that the FCC required that the costs at issue in this proceeding be recovered through the Flex ANI tariffs filed in 1998—is clearly wrong because there is not a single word in any of the relevant rules or orders addressing UNE rates.

SBC then asserts that, as a factual matter, the costs of upgrading SBC Illinois' Lucent 5ESS switches were not costs properly associated with implementing Flex ANI, because Flex ANI was fully implemented and fully operational long before the Payphone Coalition requested Unbundled Payphone Ports from SBC Illinois. It worked perfectly well, except when SBC Illinois tried to unbundle it to combined it with shared transport to provide an Unbundled Payphone Port that would work with AIN-based shared transport. According to SBC, this reveals that the security patches must be viewed as a cost of unbundling the payphone ports, not a cost of providing Flex ANI. (Id.).

SBC goes on to assert that the interaction of the AIN triggers with Flex ANI was beyond SBC Illinois' control, and it could not possibly have been foreseen in 1998, when SBC Illinois implemented Flex ANI. Therefore, the costs of upgrading the Lucent 5ESS switches could not possibly have been recovered through the Flex ANI tariff. This is true for three reasons.

First, SBC Illinois had already deployed Flex ANI and recovered the costs of deployment long before SBC Illinois deployed its AIN-based shared transport offering. Moreover, the interaction of Flex ANI and the AIN triggers was not identified until the Payphone Coalition requested the Unbundled Payphone Ports and SBC Illinois evaluated that request. Thus, until SBC Illinois developed the Unbundled Payphone Ports, it could not have anticipated the need to purchase the secure features. (Novack, Am. Ill. Ex. 2.1 at 6).

Second, SBC Illinois did not choose to provide AIN-based shared transport. To the contrary, the FCC and this Commission ordered SBC Illinois to provide AIN-based shared transport, at the insistence of the CLECs, as a part of the approval of the SBC/SBC Illinois merger. (Novack, Am. Ill. Ex. 2.1 at 6). As the Administrative Law Judge in this proceeding correctly observed during the evidentiary hearing, the CLECs were "certainly screaming for the AIN-based version to shared transport." (Tr. 222).

Third, SBC Illinois does not design switches or program switch software. It obtains them from vendors, in this case Lucent. The vendors, not SBC Illinois, determine the capabilities of the switch and design solutions for software problems. (Novack, Am. Ill. Ex. 2.1 at 6). In fact, documents introduced into the record by the Payphone Coalition make clear that Lucent did not introduce the secure features necessary to address the interaction of Flex ANI and the AIN triggers until July 2001, immediately before SBC Illinois purchased the features to support the development of the Unbundled Payphone Ports, and three years <u>after</u> the implementation of Flex ANI. (P.C. Cross Ex. 7).

As described above, the need to upgrade the Lucent 5ESS switches was neither foreseen nor foreseeable in 1998. Instead, the software interaction that led SBC Illinois to purchase the secured features necessary to support the Unbundled Payphone Ports was not identified, and the secured features to address the problem were not introduced by Lucent, until 2001. (Novack, Am. Ill. Ex. 2.1 at 5-6; Currie, Am. Ill. Ex. 1.1 at 2-3; Wardin, Am. Ill. Ex. 3.0 at 6-7; P.C. Cross Ex. 7).

Rather than supporting the provision of Flex ANI to IXCs, the costs of upgrading SBC Illinois' Lucent 5ESS switches supported only the Unbundled Payphone Port offering developed at the request of the Payphone Coalition. As explained above, the software interaction that led to the switch upgrade arose in the course of providing a UNE-P offering that would allow CLECs to serve IPPs. In early 2001, when the Payphone Coalition made their request, Flex ANI was working as designed. The problem arose only because the AIN triggers that support SBC Illinois' shared transport offering stripped the necessary ANI digits from payphone calls, rendering the Flex ANI ineffective for purposes of tracking payphone calls and compensating IPPs. (Novack, Am. Ill. Ex. 2.0 at 6-10).

To resolve that problem, SBC Illinois purchased from Lucent two secured features that Lucent had introduced for the specific purpose of allowing Flex ANI to be used in conjunction with AIN software. As described above, the secured features were developed by Lucent and purchased by SBC Illinois specifically for that purpose. The secured features serve no other purpose and support no other services for SBC Illinois. (Novack, Am. Ill. Ex. 2.0 at 9-11; Novack, Am. Ill. Ex. 2.1 at 4-5; Tr. 170-72). In short, the costs of upgrading the Lucent 5ESS switches were incurred for the sole purpose of providing the Unbundled Payphone Ports.

SBC concludes that, for the reasons explained above, the Payphone Coalition's assertion that the costs at issue in this proceeding either were or should have been recovered through the Flex ANI tariff filed in 1998 is clearly wrong. This is the only issue that the Commission must, or should, address in this proceeding.

If the Commission does address the other issues raised by the Payphone Coalition, it should reject their positions on those issues. Contrary to the arguments of the Payphone Coalition, the costs of upgrading SBC Illinois' Lucent 5ESS switches are properly recovered through the rates for the Unbundled Payphone Ports.

Mr. Starkey argued, on behalf of the Payphone Coalition, that costs of upgrading the Lucent 5ESS switches should be borne by the entire "user base" for unbundled switch ports, not just the CLECs that purchase Unbundled Payphone Ports. (Starkey, P.C. Ex. 1.0 at 3-4, 14-17, 24-25). Mr. Starkey's suggestion is wrong because, according to SBC, the members of the Payphone Coalition are clearly the "cost causers" in economic terms, with regard to the costs at issue here. As explained above, the switch upgrades were required only to provide the Unbundled Payphone Ports. Ameritech witness Dr. Currie explained the economic conclusions that must be drawn from that fact. "Such costs would be avoided if SBC Illinois did not offer payphone UNE-P lines, and these costs are incurred when SBC Illinois does offer payphone UNE-P lines. Hence, to include a larger 'user base' in developing these additional costs would violate this cost causation principle." (Currie, Am. Ill. Ex. 1.1 at 5-6). Dr. Currie continued:

> The additional costs are for making payphone UNE-P ports work. Not any switch port causes these additional costs. In fact, not even any payphone port causes these costs. Instead, only unbundled payphone ports cause the costs developed in the Upgrade Cost Study. Hence, the cost study includes only the total demand for the two types of unbundled payphone ports, namely, the ULS Basic COPTS and COPTS-Coin Line ports, that are offered by SBC Illinois and that cause these additional costs. Mr. Starkey is merely requesting that the additional costs be spread over ports that do not cause the additional costs in order to get a lower cost and, hence, a lower rate. His recommendation and argument is inappropriate and should be rejected.

(Currie, Am. Ill. Ex. 1.1 at 7 (emphasis in original); see also id. at 11-12).

Mr. Starkey also suggested that the switch upgrade costs might already be recovered through SBC Illinois' existing basic port rates. (Starkey, P.C. Ex. 1.0 at 16-18, 25-26). Once again, according to SBC, he is wrong.

As noted above, Mr. Starkey's position was that "unless SBC Illinois removes a certain software expense from its accounts before calculating either its direct investment or indirect maintenance expenses, it will undoubtedly double recover those expenses if allowed to establish a stand-alone rate additive consistent with those upgrades." (Starkey, P.C. Ex. 1.0 at 26 (emphasis added); see also id. at 16-18). However, as Dr. Currie explained, switch software expenses were removed from the switching cost study. Dr. Currie's testimony includes the calculation of SBC Illinois' switching costs from Docket 00-0700, which specifically shows the removal of software expenses from the calculation of the switching maintenance factor. (Currie, Am. Ill. Ex. 1.1 at 8-9 & Sched. KAC-1R). According to SBC, that calculation leaves no room for dispute on this issue.

The Payphone Coalition also argues that switch software upgrades generally should be included in SBC Illinois' basic port rates. According to Mr. Starkey, because software purchases will be necessary from time to time to support various services and features, such costs should be reflected in basic port rates, and additional costs should seldom, if ever, be imposed for upgrade of the kind at issue here. (Starkey, P.C. Ex. 1.0 at 16-18, 24-25). In essence, the Payphone Coalition's position is that "one port fits all." That position should be rejected for several reasons.

First, the Payphone Coalition's position is out of touch with reality. In fact, SBC Illinois offers thirteen different unbundled ports, with widely varying functions, costs and rates. That rate structure has never been challenged, for the simple reason that SBC Illinois, CLECs, and the Commission have always understood that different ports have different functions and costs, and that different rates are therefore appropriate. (Currie, Am. Ill. Ex. 1.1 at 6, 8; Novack, Am. Ill. Ex. 2.1 at 2-3).

Second, this Commission recently ruled that, when SBC Illinois must purchase secure features to provide functionalities that are not present in the existing switch software, as is the case here, the provision of such additional functionalities would be subject to the BFR process. Interim Order, Ill. C.C. Dkt. 01-0662, ¶¶ 1052-53 (Feb. 6, 2003) (the "Phase I Interim Order"). The Commission reached this conclusion by applying the FCC's decision in its so-called Louisiana II order. Id. at ¶¶ 1047-49, 1052-53. There, the FCC ruled that ILECs were required to provide unbundled access to vertical features "loaded in the software of the switch." Memorandum Opinion and Order, In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region InterLATA Services in Louisiana, CC Dkt. 98-121, ¶ 217 (Oct. 13, 1998) ("Louisiana II"). However, the FCC ruled, "we agree with BellSouth's claim that it is not obligated to provide vertical features that are not loaded in the switch software, because this would require BellSouth to build a network of superior quality." Id. at ¶ 218. As applied to the purchase of secured features, the Commission concluded that Louisiana II supported the use of the BFR process. Phase I Interim Order at ¶¶ 1052-53. As Mr. Wardin explained in this proceeding, under the BFR process, not only would CLECs be required to pay for the additional secured features, they would be required to pay the entire cost of those features in advance. (Wardin, Am. Ill. Ex. 3.0 at 8-9). CLECs can hardly complain where, as here, SBC Illinois has gone beyond the obligations set forth in Louisiana II and the Phase I Interim Order, and has offered a service requiring the purchase of secured features "that are not loaded in the switch software" (Louisiana II at ¶ 218), by tariff. By so doing, SBC Illinois has already taken on far more financial risk that either state or federal law requires.

A recent arbitration award involving the same Unbundled Payphone Port offering underscores this conclusion. In that decision, the Public Utilities Commission of Ohio (the "PUCO") ruled that SBC Ohio should be allowed to recover the costs of upgrading its Lucent 5ESS switches (as well as other costs) for the purpose of providing Unbundled Payphone Ports identical to those provided in Illinois. Arbitration Award, In the Matter of the Petition of Discount Dialtone, LLC, for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with SBC Illinois Ohio, PUCO Case No. 02-1831-TP-ARB (Oct. 31, 2002) ("Discount Dialtone") (Novack, Am. Ill. Ex. 2.2 at Sched. 2.2.1). Mr. Starkey was also a witness in that proceeding, and he made the same basic arguments he makes here: (1) that SBC Ohio recovered, or should have recovered, its costs through its federal Flex ANI tariffs, and (2) that any additional port charges would result in double-recovery of costs. (Novack, Am. Ill. Ex. 2.2 at 2). The PUCO rejected those arguments, finding as follows:

> The Commission finds persuasive SBC Illinois's simple argument that these costs would be avoided if SBC Illinois did not offer unbundled payphone ports. These costs are only incurred when SBC Illinois offers unbundled payphone ports. Since SBC Illinois has no use for the software and network upgrades except to provide an unbundled payphone port, the Commission finds that DDL by requesting an Analog Coin ID Port, is the cost causer and, consequently, DDL should pay for the use of the Analog Coin ID Port.

Discount Dialtone at 7.

Finally, acceptance of the Payphone Coalition's position would ultimately lead to higher port rates, not lower ones. If the Commission were to adopt the Payphone Coalition's "one port fits all" approach, the basic switch port costs would need to include any features that might be requested by a CLEC, whether or not SBC Illinois had any current use for such features. For example, Lucent offers approximately 9500 software features for its 5ESS switches, less than half of which SBC Illinois currently uses. If SBC Illinois were to include those costs in its unbundled switching rates, those rates would be much higher. In addition, SBC Illinois' approach results in more economically efficient rates, because it imposes the costs associated with additional features on the CLECs that actually use those features, consistent with economic principles on cost causation. (Novack, Am. Ill. Ex. 2.1 at 7; Currie, Am. Ill. Ex. 2.1 at 10-11).

B PC

The basic position of the PC is that SBC has not produced sufficient evidence to carry its burden of proof that the additional rate element that it wants to impose on the CLEC Intervenors is permissible under Section 13-801, Section 251 of the federal Communications Act, or the Commission's prior orders. 220 ILCS5/13-801; 47 U.S.C. § 251.

The PC states that the issue in this proceeding is whether SBC may impose a rate on CLECs that purchase a basic Port that is used to provide access services to PSPs, where, according to the PC, the rate to be imposed is neither cost-based, nor based on the Total Element Long Run Incremental Cost ("TELRIC") of providing the element. The PC notes that SBC's TELRIC-based rate for a basic port used by CLECs to provide UNE-P services is $2.18 per month. *ICC 00-0700 Order.* For this rate, CLECs have a right to access all features and functionalities of the switch. Section 3(29) of the Communications Act defines the term "network element" to mean both "a facility or equipment used in the provision of a telecommunications service" and all "features, functions, and capabilities that are provided by means of such facility or equipment." Such features, functions, and capabilities include "subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing or other provision of a telecommunications service." 47 U.S.C. § 3(29). The FCC has held that the "features" of a switch include all software functions that are embedded in the switching facilities of the local exchange carrier:

> We agree with MCI and MFS that the definition of the term network element includes physical facilities, such as a loop, switch, or other node, as well as logical features, functions, *and capabilities that are provided by, for example, software located in a physical facility such as a switch.* We further agree with MCI that the embedded features and functions within a network element are part of the characteristics of that element and may not be removed from it. *Accordingly, incumbent LECs must provide network elements along with all of their features and functions, so that new entrants may offer services that compete with those offered by incumbents as well as new services.*

First Report and Order, ¶ 260.

The PC asserts that Illinois law has also made clear since 1996 that SBC has an obligation to provide CLECs with access to all features, functions and capabilities of a switch on an unbundled basis, that is still capable of being combined in a platform offering. In the LDDS Petition, the Commission held that SBC was required to provide UNE-P services with shared transport in a manner that made available to CLECs all features and functionalities of the switch. This mandate was reaffirmed in 2001 when the Illinois legislature adopted Section 13-801, which also requires SBC to "provide to any requesting telecommunications carrier, for the provision of an existing or a new telecommunications service, nondiscriminatory access to network elements on any unbundled or bundled basis, as requested, at any technically feasible point on just, reasonable, and nondiscriminatory rates, terms, and conditions." 220 ILCS § 5/13-801(d). Network elements, including all the features and functionalities of the switch, are required to be made available to CLECs at TELRIC-based rates. The TELRIC of an element is "the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements." 47 C.F.R. §51.505(b).

The PC then argues that SBC's proposed $1.06 adder to recover the licensing cost SBC allegedly incurred in making Flex ANI function for UNE-P lines, would violate the requirements that SBC make all switch features and functions available at rates that are set according to the Total Element Long Run Incremental Cost of the Element. In ICC Docket No. 00-0700, the Illinois Commerce Commission held that a rate of $2.18 would fully recover the cost of the switching functions necessary to provide UNE-P, with shared transport, over the total demand output of the element. *ICC 00-0700 Order*, ¶ 76.

SBC's existing rate of $2.18 was established based on SBC's cost studies in ICC Docket No. 00-0700 that included a cost component for the licensing fees associated with switch features. Tr. 62. In ICC Docket No. 00-0700, SBC's cost studies included a cost component for a "bundle of features purchased from Lucent" that included such features as call waiting, caller ID, and multi-ring service. *Id.*; PC Cross Ex. 5. All CLECs that purchase a basic switch port would pay the same price ($2.18) regardless of whether the CLEC uses the switch features. SBC's theory on why that is appropriate under TELRIC principles, is that "these features are made available to everyone, including payphones." Tr. 68-69. However, SBC deemed this appropriate, because it was attempting to recover the cost of making the typical bundle of features available to CLECs. The Payphone Coalition CLECs do not need the features of the switch that are used to provide Call waiting, three way calling, caller ID, or other features made available by SBC on a UNE-P port. (Starkey Direct, Ex. 1.0, p. 17; PC Cross Ex. 5, p. 2.) It would violate the principles of TELRIC-based pricing for the Payphone Coalition CLECs to pay for the cost of the "average bundle" of switch features, even though they don't use these features, and then pay an additional rate for a single switch features they do use. (Starkey Direct, Ex. 1.0, p. 16.)

SBC has not completed a TELRIC cost study for the UNE-P port to be used by CLECs to provide services to PSPs, and the Commission should deny SBC's request for an additional rate element for the nonrecurring cost of the secure features. However, if the Commission permits SBC to recover the full cost of the secure features at issue, the Commission should further order SBC to provide a complete TELRIC cost study to support a UNE-P line to be used by CLECs serving PSPs, with only those software features used by these CLECs.

The PC then responds to SBC's assertions relating to the Commission's approval of BFR cost recovery where SBC had not previously recovered the costs of a secure feature. The PC argues first, that SBC's argument overlooks the fact that the Commission has compelled SBC to provide shared transport since at least 1996 and AIN based shared transport since 1999. The PC asserts that since that time, the Commission has investigated SBC's shared transport for all but 4 months. Tr. 201. In addition, under the FCC's March 8, 1998 *Memorandum Opinion and Order*, SBC was fully aware that it was required to provide Flex ANI services on access lines made available to PSPs. Despite the long standing requirement to provide Flex ANI services on payphone access lines, and the long standing requirement to provide UNE-P with shared transport, SBC now claims that it failed to recover one of the costs associated with this shared transport combination. The PC asserts that SBC cannot now be allowed to foist upon the Payphone Coalition CLECs costs that SBC failed to include in its cost studies in ICC Docket No. 00-0700.

In response to SBC's citation to *Louisiana II* for the theory that LECs are not required to provide Secure Feature Identifications (such as SFID 332 and SFID 528) to CLECs, the PC responds that *Louisiana II*, and the actual language quoted by SBC supports the Payphone Coalition position. *Louisiana II* states that BellSouth was not required to "provide vertical features that are *not* loaded in the switch software, because this would require BellSouth to build a network of superior quality." *Id*. at ¶ 218. The distinction is that SFID 332 and SFID 528 *were* resident in the Lucent switches, and simply needed to be activated by the payment of a license fee. *Louisiana II* may allow SBC to require a Bona Fide Request for a new software feature, but it does not sanction the requirement of a Bona Fide Request for a software feature already resident in a switch.

In fact, according to the PC, in *Louisiana II,* the FCC confirmed that Bell South did not satisfy the requirements of Section 251(c)(3) in providing unbundled network elements to CLECs because it did not provide to CLECs all "vertical features" of the switch. Indeed, BellSouth's failure to provide all the vertical features resident in the switch, was cause for the FCC to deny BellSouth authority to provide interLATA services under Section 271:

> Checklist Item 6 -- Unbundled Local Switching
>
> BellSouth does not satisfy the requirements of checklist item (vi). A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with "vertical features" such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services. We find that BellSouth does not satisfy the requirements of checklist item (vi), because BellSouth does not show that it provides all of the features, functions, and capabilities of the switch.
>
> * * *
>
> The features functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers. Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.

Louisiana II, ¶ ; ¶ 207.

As noted in *Louisiana II* local exchange carriers are:

> legally obligated to provide all vertical features "that the switch is capable of providing." Vertical features provide end-users with various services such as custom calling, call waiting, three-way calling, caller ID, and Centrex. According to BellSouth's interpretation of this rule, it is only legally obligated to make available vertical features that it currently offers to its retail customers. We disagree.
>
> Our rules require BellSouth to provide all vertical features loaded in the software of the switch, whether or not BellSouth offers it on a retail basis.

Louisiana II, ¶ 216-17. SBC has not complied with this requirement.

The PC next responds to SBC argument that one justification for charging CLECs the $2.18 rate that includes the typical bundle of software features is that these features are “available to the” CLECs, even if they don’t use them in serving PSP customers. Tr. 69. However, SBC violates its own pricing principle, because while it acknowledges that SFID 332 and SFID 528 can be used to fix Flex ANI issues for other services (i.e. Outward Wide Area Telecommunication Service, with Flex ANI code 52, and Private Virtual Network Services, with Flex ANI Code 93), SBC attempts to impose the entire cost of fixing defects in the provision of Flex ANI on CLECs that service PSP customers. (Tr. 151-152; PC Cross Ex. 1; PC Cross Ex. 3, p. 3.) Despite the fact that these software features will correct defects in the provision of Flex ANI, SBC has allocated the entire cost of the license fees to only those CLECs that provide access services to PSPs. SBC’s effort to do this would be inconsistent with the TELRIC pricing rules in 47 C.F.R. § 51.505(b), and inconsistent with SBC’s construction of the ICC’s Order in Docket No. 00-0700. Tr. 69.

The PC then argues in the alternative that, even assuming that SBC has established that it has incurred costs to make Flex ANI available to CLECs with Ports used to provide services to PSPs, SBC’s proposed rate structure is discriminatory and unlawful. First, according to the PC, Section 13-801(d) requires that rates for network elements be nondiscriminatory, and Section 13-801(g) requires that rates be cost-based. The PC asserts that SBC has proposed a rate that is both discriminatory and not-based based.

First, SBC’s proposed rate structure of an additional $1.07 per month does not reflect the manner in which SBC claims it incurred the cost. According to SBC, it has incurred a one-time nonrecurring cost to purchase licenses to provide Flex ANI on Lucent 5ESS switches. Despite the fact that the costs have purportedly been incurred only to upgrade Lucent 5ESS switches, SBC’s proposed rate structure would assess an additional rate element on all ports used to provide access services to PSPs. CLECs that provide service from a central office using a Nortel or Siemans port would also be required to pay the additional cost, even though no additional rate is associated with providing Flex ANI from those ports.

In addition, the cost of purchasing the licenses for the Secure Features is for CLECs using a basic port (not a Coin Line Port) to provide services to PSPs. There is no indication that SFID 332 or SFID 558 relate in any way to making Flex ANI work on Coin Line Ports. However, SBC's propose rate would be imposed on Coin Line ports that did not require any upgrades for Flex ANI.

Moreover, SBC has proposed no terminating period by which is would fully recover its costs. SBC's monthly recurring charge would allow it to recover the additional rate element long after all of its alleged nonrecurring costs have been incurred.

Second, the PC asserts that Commission held in ICC Docket No. 00-0700 that when SBC conducts a study to determine the switch costs for UNE-P with Shared Transport, it is required to consider the total quantity of lines in service, but that SBC's cost study in this case fails to even allocate the cost of the secure feature to the number of access lines that rely upon Flex ANI, including the ports that SBC uses to provide its own services to PSPs. According to the PC, the cost study attempts to recover the full cost of making UNE-P available against only CLECs, as opposed to the totality of the lines served by the SBC. (Starkey Direct, PC Ex. 1.0, p. 10.)

The PC then argues that SBC has not proven that the licenses for SFID 332 and SFID 528 were purchased to provide Flex ANI services to CLECs and so, therefore, SBC may not include the additional licensing fees on the TELRIC-based rate for Unbundled Network Elements. The PC begins its argument by noting that, in March 1998, the FCC ordered SBC to begin providing Flex ANI services to payphone service providers (PSPs) so that IXC's could identify calls that originate from pay telephones. SBC, and other local exchange carriers, were required to include 2 coding digits (70) in the data that is associated with a telephone call. This 70 identifier would allow an inter-exchange carrier ("IXC") to identify a call as originating from a pay telephone, and know that it is required to pay compensation to the PSP that operates that telephone.

To comply with the FCC's order requiring that local exchange carriers provide Flex ANI identifier 70 on all calls made from pay telephones, Lucent initially developed 2 Secure Feature Identification (SFID) software modules for its Lucent 5ESS switches, SFID 38 and SFID 142.

SFID 38 is the Flex ANI base feature software. (PC Cross Ex. 11, p. 9, ¶ 2.) SFID 142 allows SBC to assign ANI ii digits (i.e. 70 for PSP lines, 78 for Inter-LATA Restricted ANI pairs, 61 for cellular services, and 52 for Outward Wide Area Telecommunications Services or OUTWATS) based on a line's classification. (PC Cross Ex. 3, p. 3; PC Cross Ex. 9.) A carrier cannot activate SFID 142, without also activating SFID 38. (PC Cross Ex. 11, p. 9, ¶2.)

These two SFID had to be purchased by SBC to provide the 70 identifier on calls made from payphones. In addition, however, there are "Office Identification" (OFID) software features resident in the switch that, according to SBC, are not specific to a particular product such as Flex ANI or Local Transport, and "generally support the entire switch." In order for Flex ANI to operate correctly, SFID 38, SFID 142, and OFID 744 must be activated and set to "Y". (PC Cross Ex. 3, p. 9.) SBC makes no claim in this proceeding to recover the costs for SFID 38 or 142, presumably because the costs for these features were recovered from PSPs.

The PC goes on to assert that the evidence in this case shows that while SBC should have purchased 4 software features that it could have purchased to provide Flex ANI services to payphones, SBC only purchased 2. According to the PC, SBC learned in late 2000 (prior to a request for UNE-P access services from either Data Net Systems or Payphone Services) that Flex ANI was not functioning on all calls types. On calls where an end user dialed a toll free 800 call, if the 800 database returns a telephone number to the originating SBC switch that is different than the dialed 800 number, the switch would convert the 70 identifier to "24", causing the payphone provider to not be compensated on these telephone calls. (PC Cross Ex. 9, p.3.) Through testing in February 2001, SBC discovered that the purchase of SFID 332 and SFID 528 would correct this problem.

Because SBC had already filed a federal tariff to recover $1.21 per month from its PSP customers to implement Flex ANI, SBC sought to recover the expense of purchasing SFID 332 and SFID 528 from CLECs, claiming it was a cost of making UNE-P available. SBC asserts in its brief that "Lucent did not introduce the secure features necessary to address the interaction of Flex ANI and the AIN triggers until July 2001, immediately before SBC Illinois purchased the features to support the development of the Unbundled Payphone Ports . . . ." SBC Br. p. 5-6. This basic premise of SBC's case is directly contradicted by Lucent and SBC documents which make clear that "SFID 332 was released as a Software Update . . . on March 30, 1999. SFID was released 2Q2000 . . . ." (PC Cross Ex. 7, p. 5.) Both software features were released by Lucent, and made available to SBC prior to either Data Net or Payphone Services' ordering UNE-P access services in March, 2001.

As of June 2000, long after SBC was to have implemented Flex ANI, SBC had identified that "Flex-ANI does not currently work with all call scenarios." (PC Cross Ex. 9, p.3.) According to Southwestern Bell Telephone documents,

> "if [a call made from a payphone] is InterLATA, the 800 database returns a [Carrier Identification Code] and the switch forwards the 800 number and the ANI/FANI ii payphone digits to the carrier. *However, if the 800 database returns a telephone number rather than the dialed 800 number, the ANI ii digits field as digits "24" entered to identify the call as an 800 call. This means all payphone identification is lost from the call."*

(Id.; see also PC Cross Ex. 7, p. 5 "Currently, Tollfree calls translated to a POTS number are sent to the carrier with II digits of 24. . . .") Lucent was aware that there were defects in the translations, because on March 30, 1999 it released SFID 332, one of the features that is the subject of this case. (PC Cross Ex. 7, p. 5.) It then released SFID 528 in the 2nd quarter, 2000. (Id.)

In February 2001, before Payphone Services or Data Net Systems had requested UNE-P ports to be made available to PSPs, SBC learned that in order to correct the defects in providing Flex ANI on calls made from payphones, OFID 744 was *not* activated. (PC Cross Ex. 8, p. 5, email dated February 23, 2001 from John Rosenberto to Carol Gruchala "re FlexANI problem.") In order to activate OFID 744, SFID 332 and SFID 528 also had to be activated in the switches. (PC Cross Ex. 8, p. 2.) SFID 528 (identified by Lucent as 99-CP-4847) corrects this defect (when activated) by allowing a carrier like SBC to forward to an IXC the correct 70 ANI identifier even when the 800 database returns a telephone number other than the dialed 800 number. (PC Cross Ex. 3, p. 3, para. 2.1.) The reason that SFID 332 and SFID 528 were not activated in the switches is that these 2 features "were not funded" by SBC. *Id.*

SBC claims that SFID 332 and SFID 528 were developed by Lucent only after SBC requested assistance in providing Flex ANI as part of a UNE-P combination:

> Only when SBC Illinois approached LUCENT about development of the unbundled payphone port did LUCENT explain that new SFIDs must be developed by LUCENT to accommodate the new product. These new SFIDs were 332 and 528. . . LUCENT developed them specifically to address the problem in providing the unbundled payphone port offering.

(Novak Rebuttal, Am. Ex. 2.1, p. 5, line 117-120, 130-132.)

This allegedly occurred after March 2001 when Payphone Services, Inc. and Data Net Systems, LLC approach SBC to request the UNE-P combination with Flex ANI. (Wardin Direct, Am Ex. 3.0, p. 8, Line 220.)

However, SFID 332 was actually released by Lucent on March 30, 1999, and SFID 528 was released in the 2nd quarter, 2000. (PC Ex. 8.) According to Lucent, SFID 528 was released because:

> The FCC has mandated that all Service Providers provide 'per call' compensation for all 'toll free' calls originating from payphones. . . [SFID] meets FCC (Docket No. 96-128) mandate for Pay Phone Compensation.
>
> (P. 5 of PC Ex. 8.)

It is clear from the evidence, despite the testimony of Mr. Novack, that Lucent developed SFID 332 and SFID 528 to correct defects in the original software that was developed to make Flex ANI available on calls that originate from payphones. Lucent developed these software patches in March 1999 and in the 2nd Quarter 2000 in order to activate OFID 744. SBC did not purchase these SFID to provide Flex ANI on UNE-P lines to Data Net or to Payphone Services, but instead purchased the licenses for these fees to comply with the FCC's orders to make Flex ANI available on calls made from payphones.

The PC concludes that the facts here show that SBC was having difficulties in transmitting Flex ANI digits from its own switches on calls made from pay telephone providers that it was serving, and was required to purchase SFID 332 and 528 to address those problems. The PC goes on to argue that the facts show that the tariffed a rate of $1.21 to its PSP customers recovers all costs associated with providing Flex ANI. Under these circumstances, SBC's attempt to recover the additional costs from CLECs must be denied because SBC may not recover from CLECs costs that are not incurred in the provision of unbundled network elements. 220 ILCS 13-801(g).

C. SBC Reply

SBC begins by noting that the intervenors in this proceeding have changed their theory of the case at every stage of this proceeding, and they have continued that pattern in their Brief. SBC begins its argument by reciting the following:

First, the Payphone Coalition's petition raised a single issue: whether SBC Illinois recovered, or should have recovered, the costs at issue through the retail Flex ANI tariff it filed with the FCC pursuant to its <u>Payphone Clarification and Waiver Order</u>. SBC asserts that the PC's Brief abandons the single issue it raised in its petition and that, since that was the only issue raised in the pleadings initiating this docket, and that since that issue was the only issue designated for investigation by the Commission, the PC has now waived the only issue properly before the Commission.

SBC goes on to argue that the PC claimed in its Brief, for the first time in this proceeding, that the costs at issue in this proceeding were incurred not to provide an Unbundled Payphone Port offering to CLECs, but instead to address problems associated with providing Flex ANI at retail to payphone service providers ("PSPs"). According to SBC, that theory is not based on the testimony of any witness in the case. In fact, it is contrary to the testimony of the Payphone Coalition's own witness, Mr. Starkey. (See Starkey, P.C. Ex. 1.0 at 8). Instead, it is based on the uninformed speculation of the PC's attorneys, coupled with irrelevant language taken out of context from various documents. However, the record does not support the new theory. In fact, the same documents relied upon by the Payphone Coalition clearly show that it is incorrect.

Finally, according to SBC, the Payphone Coalition raised several additional new arguments in its Brief, some of which it addressed in testimony and others which it did not. SBC argues that those arguments also lack merit.

SBC begins by arguing that the scope of this proceeding was determined by the Petition of the Payphone Coalition in Docket 01-0588 and the resulting Commission Order, which initiated this docket. Order, Ill. C.C. Dkt. 01-0588, 2-3 (the "Initiating Order"); Verified Petition to Set an Interim Rate for SBC Illinois Tariff Pursuant to Section 13-801(g), Ill. C.C. Dkt. 01-0588 (Am. Ill. Ex. 3.0, Sched. WKW-3.0.2) (the "Petition"). According to the Petition of the Payphone Coalition, SBC Illinois has already recovered, or should have recovered, the costs at issue in this proceeding through the tariffs filed pursuant to the FCC's Payphone Clarification and Waiver Order. Petition at ¶¶ 11-14. As a result, the Commission granted the Payphone Coalition's Petition and entered an order initiating this docket for the purpose of investigating that issue, and only that issue. Initiating Order at 2-4.

As SBC Illinois has previously argued the Commission cannot address any issues in this proceeding except for the one identified for investigation—whether the costs at issue were recovered, or should have been recovered, in the retail tariffs filed with the FCC pursuant to the Payphone Clarification and Waiver Order. To the contrary, the Commission's order in this docket must be limited to the scope of the Payphone Coalition's Petition and the Commission's own initiating order. See, e.g., Alton & So. R.R. v. Commerce Comm'n, 316 Ill. 625, 629-30 (1925); Peoples Gas Light & Coke Co. v. Commerce Comm'n, 221 Ill. App. 3d 1053, 1060 (1st Dist. 1991); Order, Ill. C.C. Dkt. 00-0700, ¶ 29 (July 10, 2002). Moreover, a party that fails to address an issue in its briefs waives that issue. Order, Z-Tel Communications, Inc. v. Illinois Bell Telephone Co., Ill. C.C. Dkt. 02-0160, 25-26 (May 8, 2002); see Ill. S. Ct. R. 341(e)(7).

According to SBC, there is no remaining dispute about the issue that the Commission designated for investigation in this docket. SBC then asserts that the Payphone Clarification and Waiver Order did not address UNE rates in any way, and that decision therefore does not support the Payphone Coalition's position. During the evidentiary hearing, the Payphone Coalition's witness, Mr. Starkey, conceded that the Payphone Clarification and Waiver Order does not address the costs and rates that are at issue here. (Starkey, Tr. 220-22).

SBC then notes that the PC did not address any of these arguments in its Brief, other than a passing reference in the introduction that that the costs at issue in this proceeding "[s]hould have been recovered by Ameritech when it filed its federal tariffs in 1998 to recover the cost of Flex ANI." (Citing P.C. Br. at 9). SBC then notes that the brief contains no corresponding argument. The Argument section of the brief never mentions this issue, nor does it mention the Payphone Clarification and Waiver Order. Id. at 9-21. In short, according to SBC, the PC has ignored, and therefore waived, the only issue that can properly be addressed by the Commission in this proceeding. This is the only issue that the Commission should address in its order.

As SBC has asserted previously, the costs at issue in this proceeding were incurred by SBC to upgrade the software in its Lucent 5ESS switches, for the sole purpose of providing CLECs, specifically the members of the Payphone Coalition, with an Unbundled Payphone Port offering. The upgrade was necessary to permit Flex ANI to work properly in conjunction with the AIN-based version of shared transport that this Commission has ordered SBC Illinois to provide. The Commission ordered that form of shared transport at the urging of the CLECs. (Novack, Am. Ill. Ex. 2.0 at 4, 6-11; Novack, Am. Ill. Ex. 2.1 at 4-6; Wardin, Am. Ill. Ex. 3.0 at 7-9). The software upgrade at issue in this proceeding serves no other purpose in SBC Illinois' network, and it supports no other services. (Novack, Am. Ill. Ex. 2.0 at 9-11; Novack, Am. Ill. Ex. 2.1 at 4-5; Novack, Tr. 170-72).

In response to the PC's argument that SBC upgraded its switch software to resolve problems with certain toll-free "800" calls originating from payphones served by SBC Illinois at retail, SBC responds that nothing in any of the witnesses' testimony supports the Payphone Coalition's position. Rather, according to SBC, its witnesses testified very clearly that SBC Illinois purchased the new secure features for the sole purpose of supporting the Unbundled Payphone Port offering. (See, e.g., Novack, Am. Ill. Ex. 2.0 at 9-11; Novack, Am. Ill. Ex. 2.1 at 4-5; Tr. 170-72). SBC also asserts that PC witness Starkey, who had access to all of the same documents now relied upon by the Payphone Coalition, did not question SBC Illinois' assertion that it purchased the secure features for that purpose. To the contrary, his testimony accepted SBC Illinois' explanation of the costs of the switch upgrade and its reasons for performing the upgrade. He testified, "I don't take issue with the total investment and/or expense amount Ameritech Illinois claims will be required to provision an unbundled switch port capable of supporting flexible automatic number identification ('FLEX-ANI') required by pay telephone providers." (Starkey, P.C. Ex. 1.0 at 3). Similarly, he did not disagree with SBC Illinois' explanation that the upgrade was performed to support the Unbundled Payphone Port offering. Instead, he testified:

> Apparently, the AIN triggers Ameritech uses to support UNE-P conflict (within its Lucent switches) with the FLEX-ANI triggers needed to ensure that the proper two-digit payphone-specific ANI code is properly passed within the ANI stream. As such, Ameritech purchased, from Lucent, a software "patch" that would solve the problem. Likewise, Ameritech Illinois was required to upload this software onto the entirety of its embedded Lucent switching platform so as to ensure that FLEX-ANI capabilities continued to function properly.

(Id. at 8).

SBC goes on to note that while the PC relies on various cross-examination exhibits, in an attempt to demonstrate Flex ANI did not work properly for certain toll-free "800" calls placed from payphones, those documents establish only that Lucent identified a problem involving Flex ANI and toll-free calls, and that the secure features at issue in this case were proposed by Lucent as one possible means of resolving that problem. (See, e.g., P.C. Cross Ex. 7 at 5; P.C. Cross Ex. 9 at 3; P.C. Cross Ex. 10 at 5-6). According to SBC, they do not show that SBC Illinois purchased the secure features to address that problem, which is simply an unsupported conclusion by the PC. (See Novack, Tr. 118-31).

SBC asserts that there is no factual basis for the Payphone Coalition's leap of faith, as Mr. Novack repeatedly pointed out during his cross-examination by testifying at least ten times that the exhibits relied upon by the Payphone Coalition could not support the conclusion that Secure Features 332 and 528 were purchased to address a problem with toll-free calls, rather than to support Unbundled Payphone Ports. As Mr. Novack explained, none of those documents shows what solution was actually chosen to resolve the toll-free calling problem, or even if it was resolved at all. The documents relied upon by the Payphone Coalition simply do not address those questions. Novack, Tr. 118-31. Thus, after considering all of the documents relied upon by the Payphone Coalition, Mr. Novack affirmed that Secure Features 332 and 528 were purchased exclusively to support Unbundled Payphone Ports and that this is their only purpose today. (Novack, Tr. 170-72).

According to SBC, the PC's own cross-examination exhibits show that SBC Illinois purchased Secure Features 332 and 528 for the sole purpose of supporting Unbundled Payphone Ports, just as SBC Illinois' witnesses testified.

For example, Payphone Coalition Cross Exhibit 8 consists of a string of e-mails generated while the Unbundled Payphone Port offering was being developed and Secure Features 332 and 528 were being purchased. Those e-mails clearly identify the purchase of the new secure features as being related to the Unbundled Payphone Port offering, and none of them mentions a problem with toll-free calls from payphones. The first of the e-mails, captioned "Re: FlexANI problem," clearly sets forth the nature of the inquiry: "Here's what you need for Flex ANI and\or Pay Phone comp to work with AIN [Advanced Intelligent Network] TF and AIN in general." (P.C. Cross Ex. 8 at 5). The subsequent e-mails in the series are captioned "Re: SFID and OFID Features for FlexANI in LT/ST [long-term shared transport]." One of those e-mails, dated February 27, 2001, further clarifies that Secure Features 332 and 528 were purchased to support the Unbundled Payphone Port offering. It states, "We are trying to get FlexANI to work in the Ameritech field 5ESS switches for LT/ST (in preparation for when we will be offering COCOTs [customer-owned coin-operated telephones] with LT/ST)." (Id. at 2-3 (emphasis added)). The references to "AIN" and "LS/ST" make clear that these e-mails are discussing the Unbundled Payphone Port offering, since the retail services that SBC Illinois provides to payphone service providers do not use the AIN platform or AIN-based shared transport. See Novack, Tr. 110-11.

Similarly, Payphone Coalition Cross Exhibit 11 consists of another string of e-mails concerning the purchase of Secure Features 332 and 528. The most recent of the string, captioned "Flex ANI with LTST," explains the problem as follows:

> It appears that the 5ESS requires the 4 Secure Feature IDs described below. AIT [Ameritech] already owns SFID 38 and SFID 142. The 2 new features are SFID 332 and SFID 528. When those 2 are activated, the

> 5ESS can turn on Optioned Features 744 and 745 so that FlexANI will work with AIN.

(P.C. Cross Ex. 11 at 1).

Below that e-mail appears the same one quoted from Payphone Coalition Cross Exhibit 8, above, stating, "Here's what you need for Flex ANI and/or Pay Phone comp to work with AIN TF and AIN in general." (Id. at 2-3). As with Payphone Coalition Cross Exhibit 8, this leaves no question that the new Secure Features were purchased exclusively to support the Unbundled Payphone Port offering. And, again consistent with Payphone Coalition Cross Exhibit 8, none of the e-mails in this exhibit mentions a problem with toll-free calls at all. (Id. at 1-3).

In summary, the record clearly shows that the software upgrades at issue in this case were performed specifically to make Unbundled Payphone Ports available. The evidence includes not only SBC Illinois' testimony (Novack, Am. Ill. Ex. 2.0 at 6-11; Novack, Am. Ill. Ex. 2.1 at 4-6; Novack, Tr. 70-72), but also the Payphone Coalition's own cross-examination exhibits (P.C. Cross Ex. 8 at 2-3-, 5; P.C. Cross Ex. 11 at 1-3). Conversely, there is no affirmative evidence that the software upgrades were performed for any other reason, as the documents relied upon by the Payphone Coalition simply do not address that issue. (See Novack, Tr. 118-31, 170-72).

In response to the PC's argument that SBC Illinois should not recover the costs of upgrading its Lucent 5ESS switches, because it already recovers all of its switch software costs in its basic unbundled port rate, which the Commission reviewed in Docket 00-0700, SBC first notes that the PC made a facially similar, but significantly different, argument in its testimony. There, Mr. Starkey testified that the switch upgrade costs might already be recovered through SBC Illinois' existing basic port rates. (Starkey, P.C. Ex. 1.0 at 16-18, 25-26). Mr. Starkey explained that "unless SBC Illinois removes a certain software expense from its accounts before calculating either its direct investment or indirect maintenance expenses, it will undoubtedly double recover those expenses if allowed to establish a stand-alone rate additive consistent with those upgrades." (Starkey, P.C. Ex. 1.0 at 26; see also id. at 16-18).

SBC argues that this position is based upon the assumption that the costs of new secure features had not been removed from the costs in the study, an assumption that is wrong. As Dr. Currie explained, switch software expenses of the kind at issue here were removed from the switching cost study. Dr. Currie's testimony included the actual calculation of SBC Illinois' switching costs from Docket 00-0700, which specifically showed the removal of software expenses from the calculation of the switching maintenance factor. (Currie, Am. Ill. Ex. 1.1 at 8-9 & Sched. KAC-1R). According to SBC, Dr. Currie's testimony and the supporting exhibit leave no room for dispute on this issue.

SBC again notes that the PC does not dispute any of this in its brief. In fact, it carefully avoids addressing either Dr. Currie's or Mr. Starkey's testimony on this subject.

Instead, the Payphone Coalition changes its argument, arguing that SBC Illinois' basic port rate, by definition, must include all of the "features and functions" of the switch. The PC argues that those features and functions include the ability to combine Flex ANI with AIN-based shared transport.

SBC makes a number of responses. First, and most importantly according to SBC, the Payphone Coalition's position is fundamentally inconsistent with the Commission's recent Phase I Interim Order in SBC Illinois' Section 271 proceeding. The Commission concluded that, whenever SBC Illinois must purchase new secure features for its switches, the costs of the new secure features may be separately recovered, through the BFR process. Interim Order, Ill. C.C. Dkt. 01-0662, ¶¶ 1062-63 (Feb. 6, 2003) (the "Phase I Interim Order"). Here, by voluntarily tariffing the Unbundled Payphone Port offering, SBC Illinois has done far more, and has taken on far more financial risk, than the Commission's decision requires. While SBC Illinois pointed this out in its Brief, the Payphone Coalition never addressed the Commission's Phase I Interim Order in its Brief.

In response to the PC's reliance on FCC's Louisiana II decision for the proposition that the new secure features (which were not accessible to SBC until it paid the right to use fees at issue here) should be considered to be among the pre-existing "features, functions and capabilities" of the switch, SBC responds that if the Commission shared this view, it would not have decided the Phase I Interim Order as it did, since the Commission expressly relied on Louisiana II in reaching its decision. SBC argues that the Payphone Coalition is trying to get the Commission to reconsider its Phase I Interim Order, while studiously avoiding any discussion, or even recognition, of that order in its Brief. However, even if the Payphone Coalition's tactics were procedurally proper (which they obviously are not) the Commission's current reading of Louisiana II is entirely correct.

According to SBC, in Louisiana II, BellSouth refused to provide CLECs with vertical features that were both loaded and active in its switches, but that BellSouth did not provide to its own retail customers. The FCC found that to be inappropriate, since the vertical features were already fully available. The FCC ruled as follows:

> The features, functions and capabilities of the switch are the same basic capabilities that are available to the incumbent LEC's customers. Additionally, local switching includes all vertical features that the switch is capable of providing . . . .

Louisiana II at ¶ 207.

As a result, the FCC concluded that BellSouth was required to provide unbundled access to any vertical feature "loaded in the software of the switch, whether or not BellSouth offers it on a retail basis." Louisiana II at ¶ 217. However, at the same time, the FCC made clear that ILECs were not required to provide any new switching capabilities. The FCC explained as follows:

> [W]e agree with BellSouth's claim that it is not obligated to provide vertical features that are not loaded in the switch software, because this would require BellSouth to build a network of superior quality.

Id at ¶ 218.

The FCC's point—fully applicable in this case—was that an ILEC must provide CLECs with existing switching capabilities, not new ones.

The PC seizes on the FCC's use of the phrase "loaded in the switch" and claims that Secure Features 332 and 528 are already "loaded in the switch" in this case, needing only to be activated. Therefore, the PC daims that Secure Features 332 and 528 must be provided at no additional cost. P.C. Br. at 12-14. According to SBC, the PC reading of Louisiana II makes no practical, economic or policy sense. Even Mr. Starkey recognized that SBC's Lucent 5ESS switches were not capable of combining Flex ANI with AIN-based shared transport at the time of the CLECs' request. (P.C. Ex. 1.0 at 8). And even the PC does not contend that SBC Illinois could use the new secure features without paying for them. In effect, the PC is suggesting that Secure Features 332 and 528 were among the "features that the switch is capable of providing" when SBC Illinois got its first request for an Unbundled Payphone Port, even though it is uncontested that SBC Illinois had not paid for those features and therefore could not use them at that time. Under those circumstances, SBC finds it absurd to suggest that Secure Features 332 and 528 were features that the switch was "capable of providing" at the time of the CLECs' request. See Louisiana II at ¶ 207; see Phase I Interim Order at ¶¶ 1062-63.

Second, according to SBC, even if the PC's reading of Louisiana II were otherwise correct, that decision would not support its position here. The FCC's order deals with which switch features must be provided to CLECs, but it does not address the rates at which they must be provided. The PC claims that SBC Illinois must provide all of the "features, functions and capabilities" of the switch. P.C. Br. at 12-14. However, that point is moot here, because SBC Illinois has, without question, upgraded its Lucent 5ESS switches and made Unbundled Payphone Ports available to CLECs. Nothing in Louisiana II, nor anything else cited by the PC, requires that SBC Illinois do so without recovering the costs associated with the upgrade. To the contrary, the FCC specifically recognized in Louisiana II that "[a]ctivating a vertical feature loaded in the software of a switch constitutes a modification to the BOC's facility." Louisiana II at ¶ 218. The FCC further noted that, an ILEC incurs costs in making such a modification, "incumbent LECs may recover such costs from requesting carriers." Id. at n. 727 (emphasis added).

Third, according to SBC, the PC's new argument is inconsistent with the testimony of its own witness, Mr. Starkey. As noted above, Mr. Starkey recognized that, to determine the costs that are recovered through SBC's basic port rate, one must evaluate the cost study that supports that rate. Mr. Starkey argued that the basic port rate might already recover the costs at issue in this case "unless SBC Illinois removes a certain software expense from its accounts before calculating either its direct investment or indirect maintenance expenses." (Starkey, P.C. Ex. 1.0 at 26 (emphasis added); see also id. at 16-18). As previously discussed, SBC contends that those costs were removed from the study presented in Docket 00-0700. SBC notes that in the course of making this argument, the PC has again apparently abandoned its witnesses position, arguing that the costs at issue in this docket are recovered in the basic port rate, even though there is no remaining dispute that those costs were affirmatively removed from the basic port rate cost study.

Fourth, according to SBC, the PC's position ignores the structure of SBC's unbundled switching rates. SBC asserts that it offers thirteen different unbundled ports, with widely varying functions, costs and rates. That rate structure has never been challenged, for the simple reason that SBC Illinois, CLECs, and the Commission have always understood that different ports have different functions and costs, and that different rates are therefore appropriate for each type of port. (Currie, Am. Ill. Ex. 1.1 at 6, 8; Novack, Am. Ill. Ex. 2.1 at 2-3). In this case, the PC argues, in essence, that the basic port must do everything for everyone. Obviously, according to SBC, that is not the case, or there would be only one port offering at one rate.

Fifth, SBC asserts that acceptance of the PC's position on this issue would ultimately lead to higher port rates for all subscribers because, under this approach, basic switch port costs would need to include any features that might possibly be requested by any taker, whether or not there were any current use for such features. Lucent offers literally thousands of such features. If SBC Illinois were to include those costs in its unbundled switching rates, port rates would need to be much higher to reflect the costs of the additional functionality. (Novack, Am. Ill. Ex. 2.1 at 7).

Sixth, according to SBC, the PC chooses to ignore, rather than address, the recent arbitration award entered by the Public Utilities Commission of Ohio (the "PUCO"), in Discount Dial Tone. SBC again asserts that the PUCO ruled that SBC Ohio should be allowed to recover the costs of upgrading its Lucent 5ESS switches (as well as other costs) for the purpose of providing Unbundled Payphone Ports identical to those provided in Illinois. The PUCO concluded:

> The Commission finds persuasive SBC's simple argument that these costs would be avoided if SBC did not offer unbundled payphone ports. These costs are only incurred when SBC offers unbundled payphone ports. Since SBC has no use for the software and network upgrades except to provide an unbundled payphone port, the Commission finds that DDL by requesting an Analog Coin ID Port, is the cost causer and, consequently, DDL should pay for the use of the Analog Coin ID Port.

Discount Dialtone at 7.

SBC concludes by addressing the PC remaining arguments, which SBC asserts address what are essentially rate design issues. That is, they address how SBC Illinois should recover the costs of Secure Features 332 and 528, not whether it should recover those costs. According to SBC, the arguments lack merit and should be rejected.

SBC first responds to two PC arguments revolving around the basis contention that SBC Illinois has spread the costs of the new secure features across the wrong set of customers. SBC asserts that these arguments are, alternatively: that the costs at issue should be spread more broadly, by imposing them on all CLECs (P.C. Br. at 14-15) or even on all SBC Illinois access lines (id. at 16-17)or; that the costs should be spread more narrowly by being allocated only to CLECs serving Independent Payphone Providers ("IPPs") over "Coin Line Ports," rather than "basic ports," or by limiting the additional charges to ports in Lucent 5ESS switches. (P.C. Br. 15-17). SBC first response is that the arguments are completely inconsistent with each other and should be dismissed for that reason alone. SBC goes on to asserts that they are also invalid for other reasons.

SBC responds to the first of these arguments, which it asserts is based on the theory that Secure Features 332 and 528 "can be used" to support offerings other than Unbundled Payphone Ports. (P.C. Br. at 14). SBC asserts that the undisputed evidence in the record shows that the new secure features do not serve any other purpose or support any other UNEs or services. (Novack, Am. Ill. Ex. 2.0 at 9-10; Novack, Am. Ill. Ex. 2.1 at 4-5; Novack, Tr. 170-72). As Dr. Currie explained, to reflect that fact, rates were developed by spreading the costs of the new secure features over the projected number of Unbundled Payphone Ports. That rate design is economically correct, because users of those ports—and not the users of any other switch ports—are the cost causers. (Currie, Am. Ill. Ex. 1.1 at 6-7). SBC notes that the Payphone Coalition has never identified any other UNE or service that uses Secure Feature 332 or 528; it has only speculated that the secure feature might possibly have other uses, speculation that was rejected by the Ohio commission, which found that "'[t]hese costs are only incurred when SBC offers unbundled payphone ports." Discount Dialtone at 7. According to SBC, the CLECs that use Unbundled Payphone Ports are the cost causers here and they should be required to bear the costs of the switch upgrade. Id.

According to SBC, the PC's second argument also ignores the record. The Payphone Coalition speculates, without reference to anything in the record, that the new secure features support what the Payphone Coalition calls a "basic port" but not what the Payphone Coalition calls a "Coin Line Port." (P.C. Br. at 16). However, Mr. Novack made clear that SBC Illinois offers two types of unbundled offerings for serving IPPs: the Basic COPTS Line UNE-P and the COPTS Coin Line UNE-P. As Mr. Novack explained, both of those offerings employ Flex ANI in the same way, and both of those offerings required the Lucent 5ESS switches to be upgraded. (Novack, Am. Ill. Ex. 2.0 at 3-4). Once again, the record contains no contrary evidence, and the Payphone Coalition cites none. (See P.C. Br. at 16).

In addition, according to SBC, there is no basis for imposing all of the costs of the switch upgrades on CLECs served from Lucent 5ESS switches, as the Payphone Coalition suggests, because the Commission sets rates for services (or UNEs), not for technologies. SBC indicates it is not aware of any instance in which the Commission has ordered separate rates for the same service (or UNE), depending on the technology involved. Instead, all of the costs for a service (or UNE) are generally averaged over the entire system, yielding a single rate. More importantly, the FCC's TELRIC rules require that prices be set for each UNE, not for each technology. 47 CFR §§ 51.503, 51.505, 51.507. The TELRIC rules require state commissions to set geographically deaveraged rates to account for geographic differences in costs, but nothing in the rules either requires or permits deaveraging according to technology. Id. at § 51.507(f).

In response to the PC's suggestion that a "terminating period" should be imposed on the recovery of the costs of the secure features because the costs were incurred on a "one time" basis, SBC responds that this argument is inconsistent with the forward-looking nature of UNE rates. Because UNE rates are based on forward-looking costs, not historical (or "embedded") costs (47 CRF § 51.505(d)(1)), all costs that would be incurred to provide a UNE on a forward-looking basis must be considered in setting UNE rates, regardless of past costs or past cost recovery. For example, as Dr. Currie explained, SBC Illinois' unbundled loop rates are based only on the forward-looking costs of providing loops, and do not take into account the recovery of the Company's historical costs of service in the past, through its retail rates. (Currie, Am. Ill. Ex. 1.1 at 3). The same is true here and the costs of Secure Features 332 and 528 will remain part of the forward-looking costs of providing Unbundled Payphone Ports in the future, and therefore remain a part of the rate calculation.

Finally, SBC notes that Mr. Starkey's testimony did not discuss any of the Payphone Coalition's rate design proposals. (See generally Starkey, P.C. Ex. 1.0). If there were any merit to the Payphone Coalition's proposals, one would expect Mr. Starkey to have supported them.

IV. COMMISSION ANALYSIS AND CONCLUSION

The Commission has reviewed the evidence and arguments of the parties and concludes that the adder proposed by SBC to reflect the purchase of SFID 332 and 528 is appropriate in both theory and amount. We begin first by ageing with SBC that the scope of this docket is indeed limited by the Petitions filed by Data Net Systems, LLC, TruComm Corporation, and Payphone Services, Inc. and the Commission's Initiating Order. Those issues are: whether Ameritech Illinois has either already recovered the costs for Flex ANI implementation or has already had the opportunity to recover the costs under the FCC orders, and; whether there is sufficient cost justification for an additional $2.19 recurring monthly rate element.

In terms of the first issue, we find nothing in of the FCC Orders cited by the PC that remotely suggests that the issue of coin ports coupled with shared transport was considered by that body in ordering LECs to provide Flex ANI to payphone providers. In fact all of the orders are specific in addressing issues related to payphone provider compensation from IXCs and LEC cost recovery from payphone providers, not issues relating to cost recovery from CLECs, who in turn look to payphone providers. They are, thus, readily distinguishable and of no moment to the case *sub judice.* Further, none of the ICC dockets address this issue, which is a matter of first impression before this Commission. While it is true that some of the docket have addressed the requirement that LECs provide all of the functions and functionalities of a switch when a switch is requested, that issue is not germane to this controversy, which is over pricing of one function that is inarguably being provided to all requesting carriers by SBC. The only issue is whether the costs that SBC is seeking to recover have been proven. In our opinion, they have.

There is no dispute that SBC purchased the licenses for SFID 332 and 528, and no dispute over the amount spent for the licenses. The only dispute is over the uses of the software. The PC argues that based upon certain inferences from e-mail strings entered into the record as cross exhibits, one can conclude that SFID 332 and 528 were suggested as cures for long distance Flex ANI problems SBC was experiencing prior to its introduction of the coin port/shared transport UNE. SBC responds that the e-mails are equivocal and that there is no evidence tending to show that the software patches were ever used for any purpose other than resolving the coin call/Flex ANI problem. We agree with SBC. The e-mails are in fact equivocal. The fact that is not equivocal is that SBC did not purchase the rights to the patches until the coin line problem arose. The inference to be reached from this is that they were not utilized to correct another problem, but only to correct the stripping of the ANI digits from payphone calls. Accordingly, the CLECs that intended to market the service to payphone providers and ultimately, the payphone providers themselves are the cost causers and should be the source of cost recovery. While the PC has raised an intellectually interesting issue concerning the bundling of a number on unused and apparently unwanted vertical services (*e.g.* call waiting) into the basic line port rate that formed the basis for the coin call port rate, that issue in not before the Commission in this matter.

The only remaining issue that was raised by the pleadings and the initiating order concerned the possibility that the basic port rate already contained cost recovery of all possible software licenses in the maintenance factor. We agree with SBC, as apparently did PC witness Starkey, that a review of the calculation approved by the Commission in Docket No. 00-0700, that all software costs were removed from the Line Port charge, thereby taking this issue off the table. In sum, the (revised) $1.07 adder proposed by SBC is not being recovered, could not have been and was not the subject of any previous request for cost recovery before either the FCC or this Commission and was properly supported by the evidence in this docket.

V. FINDINGS AND CONCLUSIONS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds the following:

(1) Data Net Systems, LLC, TruComm Corporation and Payphone Services, Inc. are all authorized to provide resold and facilities-based local and

interexchange telecommunications services in Illinois throughout the state of Illinois and each are telecommunications carriers within the meaning of Section 13-202 of the Act;

(2) Illinois Bell Telephone Company ("Ameritech Illinois") is an incumbent local exchange carrier ("ILEC"), authorized to provide local and intraMSA interexchange telecommunications services in Illinois within its designated service territory;

(3) The Commission has jurisdiction over the parties to this proceeding, which are named in finding paragraphs (1) and (2), and over the subject matter herein;

(4) The recurring monthly rate for Ameritech Illinois's proposed Basic COPTS Port and the COPTS-Coin Line Port shall be the same as the Basic Line Port, currently $2.18 per month, plus $1.07 to reflect the purchase of SFID 332 and 528, and subject to any change in the Basic Line Port rate pursuant to the Commission's orders;

(5) Ameritech Illinois Payphone Port Tariff shall otherwise be allowed to remain in effect subject to the above rates set by the Commission under Section 13-801(g) of the Act.

IT IS THEREFORE ORDERED that the recurring monthly rate for Ameritech Illinois's proposed Basic COPTS Port and the COPTS-Coin Line Port shall be the same as the Basic Line Port, currently $2.18 per month, plus $1.07 to reflect the purchase of SFID 332 and 528, and subject to any change in the Basic Line Port rate pursuant to the Commission's orders.

IT IS FURTHER ORDERED that Ameritech shall file tariffs that comply with the findings and conclusions herein within 45 days of the entry of this order.

IT IS FURTHER ORDERED that any petitions, objections, or motions made in this proceeding that have not been specifically ruled upon are hereby disposed of in a manner consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that materials submitted in this docket for which proprietary treatment was requested will be afforded proprietary treatment.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 22nd day of October, 2003.

(SIGNED) EDWARD C. HURLEY

Chairman